FEDERAL COURT.

James Puthuchery (*Upale Masacorale* with him) for the applicant.

Fong Seng Yee (Senior Federal Counsel) for the Government of Malaysia.

Datuk Nik Mohamed bin Nik Yahya (Legal Adviser, Johore) for the Government of Johore.

Suffian L.P.: The applicant company, owner of a rubber estate (East Union Estate) of 7,477 acres in Johore, did not pay the quit rent due for 1973 ($115,634.70) and, after notice, on March 13, 1975, was understandably mortified to see the estate forfeited by the Johore Government acting under Part Six, Chapter I of the National Land Code, which includes section 100. It appealed twice to the State Government to have the forfeiture annulled, but each time the appeal was turned down. So it now wants to come to this court (which has exclusive original jurisdiction over a matter of this kind, see Article 128(1)(a) of the Constitution) to ask for a declaration that section 100 is void, being, it is said, *ultra vires* Article 76(4). To do this, it seeks the leave of a judge of this court. Hence this application.

Over the objection of the Malaysian Government and the Johore Government, I granted leave and now give my reasons.

The first issue is whether or not leave is necessary.

Mr. Fong for the Malaysian Government contended that no leave was necessary and that therefore this application was superfluous, and he cited in support my decision in *Syarikat Banita Sdn. Bhd.* v. *Government of State of Sabah.*[1]

I do not think that that case applies. There the contention was that the impugned law was contrary to the Constitution. That is not the contention here, the contention here being that Parliament exceeded the power given to it by Article 76(4) when it enacted the section. In other words, the contention is that Parliament did not have power to enact it.

The scheme of the Constitution is that land is a state subject concerning which only state legislatures have power to legislate. That is so provided by Clause (2) of Article 74 and item 2 in the state list in the 9th Schedule. But Clause (4) of Article 76 makes an exception by providing that "for the purpose only of ensuring uniformity of law and policy," Parliament "may make laws with respect to land tenure, the relations of landlord and tenant, registration of titles and deeds relating to land, transfer of land, mortgages, leases and charges in respect of land, easements and other rights and interests in land, compulsory acquisition of land, rating and valuation of land".

The applicant in its affidavit in support appears to concede that Parliament may in certain circumstances legislate as regards land, though it is a state subject; but contends that the impugned section "is in excess of the limitation imposed by the legislative competence of Parliament by Article 76(4) of the Constitution of Malaysia". Secondly, it says that even prior to the Code there already existed uniform laws in every State on the Peninsula setting out the steps to be taken by each State in the event of non-payment of rent, and so the impugned section was not enacted only for the purpose of ensuring uniformity of law and policy in relation to recovery of rent.

As the contention is that the section is void because Parliament does not have power to enact it, and this is not an inter-governmental dispute, leave is necessary before proceedings can be commenced — see Clause (4) of Article 4 which reads:

"'(4) Proceedings for a declaration that a law is invalid on the ground mentioned in Clause (3)' — i.e. that the legislature concerned has no power to enact it — '(not being proceedings falling within paragraph (a) or (b) of the Clause)' — i.e. not being proceedings between governments — 'shall not be commenced without the leave of a judge of the Federal Court;..."

The second issue is, should leave be granted?

Datuk Nik Mohamed, for the Johore Government, opposed the application on the ground that the company had three remedies under section 134(1) of the Code, that it had only pursued one of them (by applying to have the forfeiture annulled), that the second and last application was turned down on July 29, 1975, and that only on April 15, 1980 — i.e. nearly three years later — did it show a desire to ask this court for this declaration, which is obviously an indirect way of trying to have the forfeiture annulled. I do not think that this objection can be upheld. If the impugned section is void, then the forfeiture is also void, section 134(1) notwithstanding.

For the above reasons, I gave leave as prayed, because I do not think that it is fair to deny the company the opportunity of having this matter ventilated in court.

Leave granted.

Solicitors: *Skrine & Co.*

J.L.J. SELVAM & ANOR. v. S.J. MEHTA & ANOR.

[F.C. (Suffian L.P.) April 28 & May 8, 1980]

[Kuala Lumpur — Federal Court Civil Appeal No. 46 of 1980]

Practice and Procedure — Appeal — Notice of appeal filed within time — Appeal record not filed within time — Application to extend time — Delay of trial judge in supplying notes of evidence and grounds of decision — Discretion to allow extension time — Federal Court Civil Appeal (Transitional Rules), 1963, rr. 13 & 73.

In this case the appellant had filed the notice of appeal in time but did not file the appeal record in time. The reason for the delay was because the learned judge did not supply the notes of evidence and the grounds of decision in time so as to enable the appellants to file the appeal record. The appellants applied for extension of time to file the record of appeal.

Held: the court has a discretion to grant an extension of time under rule 73 of the Federal Court Civil Appeals (Transitional Rules), 1963. Delay by the learned trial judge in supplying the necessary papers is a good ground for allowing the application.

Cases referred to:-

(1) *Ratnam* v. *Cumarasamy & Anor.* [1965] 1 M.L.J. 228.

(2) *Chong Kueng Ying & Ors.* v. *Louis Lavagna* [1972] 1 M.L.J. 180.

(3) *Gan Hay Chong* v. *Siow Kian Yuh & Anor.* [1975] 2 M.L.J. 129.

FEDERAL COURT.

Miss G. Ambiavagar for the appellant.

K.L. Rekhraj for the respondent.

Cur. Adv. Vult.

Suffian L.P.: This is an application for extension of time to file a record of appeal made under rule 73 of the Civil Appeals (Transitional) Rules, 1963.

The judgment appealed from was delivered on January 29, 1980. Notice of appeal was filed within time on February 14. On March 17, the Chief Registrar wrote to the appellants' solicitors saying that the appeal record must be filed on or before April 1.

They did not do so because by then they had not received the learned judge's notes of evidence and grounds of judgment.

They could have followed the advice contained in Practice Note No. 2 of 1970 [1970] 2 M.L.J. lvi and before April 1 sought the respondents' consent to enlargement of time without application to the court, and Mr. Rekhraj for the respondents told me that if that had been done, in the circumstances his clients would have had no choice but to consent.

The learned judge's notes of evidence and grounds were supplied to the appellants only on April 3 and they are now ready to file their record of appeal.

Mr. Rekhraj submitted nevertheless that this application should not be allowed — because among other things the appellants did not file this application until April 18, 1980, 18 days after the last day for filing the appeal record, and, secondly, the appellants gave no reason in their affidavit why time should be extended.

Miss Ambiavagar, counsel for the appellants, stated from the Bar that between April 3 and 5, after receiving the notes of evidence and the grounds of judgment, she rang up Mr. Rekhraj to ask whether the respondents would agree to extend time, and she was told "No". Hence this application to the court.

Having considered the cases cited by Mr. Rekhraj, namely: *Ratnam* v. *Cumarasamy & Anor.*;[1] *Chong Kueng Ying & Ors.* v. *Louis Lavagna*;[2] and *Gan Hay Chong* v. *Siow Kian Yuh & Anor.*,[3] I am of the opinion that this application should be granted, and I therefore grant it, the record to be filed within a week from today and the appellants to pay costs of this application.

In my view, none of the cases cited precludes me from exercising my discretion in favour of the appellants, this being an application not under rule 13 but under rule 73, which allows an application such as this to be made even after the expiration of the time within which the record should have been filed. Delay by the learned trial judge in supplying the necessary papers is in my view a good ground for allowing the application, and there is no question here of any mistake by the appellants' solicitors. Failure to comply with Practice Note 2 of 1970 is to save costs, and as appellants have to pay the costs of this application, the respondents should have no cause for complaint.

Application granted.

Solicitors: *Ambiavagar & Co.*; *K.L. Rekhraj & Co.*

PUBLIC PROSECUTOR v. YONG THIAM FATT

[A.Cr.J. (Harun J.) October 12, 1979]

[Kuala Lumpur — Criminal Appeal No. 29 of 1979]

Criminal Law and Procedure — Offence of using a vehicle without third party insurance — Whether court has discretion to make an order under s. 173A Criminal Procedure Code — Cautioned and discharged — Whether disqualification mandatory — Road Traffic Ordinance 1958, s. 74 — Criminal Procedure Code (F.M.S. Cap. 6), s. 173A.

Road traffic — Disqualification — Road Traffic Ordinance 1958, s. 74.

In this case the respondent had been convicted on his plea of guilty of three charges of (i) not displaying "L" plates (ii) carrying a pillion rider and (iii) using the vehicle without third party insurance. On the third charge he was "cautioned and discharged." The Public Prosecutor appealed against the sentence on the third charge.

Held: (1) the Magistrate in the exercise of his judicial discretion has the power to make an order under section 173A Criminal Procedure Code for a contravention of section 74 of the Road Traffic Ordinance;

(2) whether the offender is convicted or not there is no necessity for the court to order disqualification for a period of twelve months since such disqualification is automatic.

Cases referred to:-

(1) *Jayanathan* v. *Public Prosecutor* [1973] 2 M.L.J. 68.

(2) *Chan Tak Sang* v. *Public Prosecutor* [1956] M.L.J. 256.

[The following cases were also cited in argument: *Public Prosecutor* v. *Albert See* [1971] 1 M.L.J. 47; and *Public Prosecutor* v. *Nasir* [1972] 2 M.L.J. 39.]

CRIMINAL APPEAL.

Mah Weng Kwai (Deputy Public Prosecutor) for the appellant.

Respondent absent.

Cur. Adv. Vult.

Harun J.: This appeal is of some importance in that it involves a type of case which occurs daily in the Magistrates' Courts and there are nine other similar appeals pending.

It concerns the familiar case of the motor cyclist who faces three charges of —

(i) Not displaying 'L' plates;

(ii) Carrying a pillion rider; and

(iii) Using the vehicle without Third Party insurance.

The respondent in this case pleaded guilty to all three charges and was sentenced:

On the first charge to a fine of $30 in default 6 days' imprisonment;

On the second charge to a fine of $50 in default 10 days' imprisonment; and

On the third charge he was "cautioned and discharged".

The Public Prosecutor is concerned with the order made in respect of the third charge. The law rele-